

ministrative action in connection with all persons, organizations, associations, or corporations believed to be guilty of wrongdoing punishable by law.

§ 14.12 In the 84th Congress, the Senate by resolution created a select committee to investigate an attempt by a campaign contributor to influence the vote of a Senator.

On Feb. 7, 1956,⁽²⁾ there was laid before the Senate a resolution (S. Res. 205) establishing a select committee to investigate allegedly improper attempts through political contributions to influence the

vote of a Senator. The Senate adopted the resolution:

Resolved, That there is hereby established a select committee to investigate the circumstances involving an alleged improper attempt through political contributions to influence the vote of the junior Senator from South Dakota [Mr. Case] in connection with the Senate's consideration of the bill S. 1853, the natural gas bill.

Parliamentarian's Note: During the consideration of S. 1853, the gas bill, Senator Francis H. Case announced that an attempt had been made to influence his vote on the measure by tendering him a campaign contribution.

D. CERTIFICATES OF ELECTION

§ 15. In General; Form

After congressional elections have been conducted and results tabulated, the official returns are transmitted to the state executive, or other official designated to re-

ceive them under state law, for the issuance of a certificate of election.⁽³⁾ These certificates, also termed "credentials," are sent to the Clerk of the House for initial use in composing the Clerk's roll before the convening of Congress.

2. 102 CONG. REC. 2167, 84th Cong. 2d Sess.

3. The subject of this division is the issuance and form of election certificates, substantive grounds for challenge to their validity, and the practice of the House in determining whether a Member-elect may be sworn on the strength of his certificate.

On occasion, challenges to the validity of an election or to the satis-

faction of qualifications (see §§ 16.6, 16.7, *infra*) or to other matters are stated as challenges to the credentials. Such challenges are treated elsewhere; see Ch. 2, *supra* (enrolling Members and administering the oath), Ch. 7, *supra* (qualifications of Members), and Ch. 9, *infra* (election contests).

Once Congress meets, the certificate constitutes evidence of a *prima facie* right to a congressional seat in the House.⁽⁴⁾

The certificate is neither binding on the House nor essential to the administration of the oath, since the House is the sole and final judge of the elections and returns of its Members.⁽⁵⁾ Any Member or Member-elect has the right to object to the administration of the oath to another by delivering a challenge either to the validity of the election or to the validity of the certificate itself.⁽⁶⁾

The certificate must show that the Representative-elect was regularly elected in accordance with the laws of his state or the laws of the United States.⁽⁷⁾ Most state

laws provide for the Governor to issue the certificate under the seal of the state, although some provide for the secretary of state to perform the function,⁽⁸⁾ and some require the concurrent action of another body, such as an executive council.⁽⁹⁾ A citizens' group or party committee has no authority to issue a certificate based on an election conducted by them, even if the regular election was conducted in violation of state or federal law.⁽¹⁰⁾

The state Governor, or other official charged with the function, has an affirmative duty to issue and deliver the credentials and cannot reject the official results.⁽¹¹⁾ Where no regular election is held, there being only one qualified candidate, the Governor may proclaim him duly elected and thereafter issue a certificate of election.⁽¹²⁾

A Member may be enrolled and even sworn by action of the House even though a state court has enjoined the issuance of a certificate

4. The term "certificate of election" has been preferred herein to "credentials" since reference is to a specific document and not to qualifications in general.

For the procedure of presenting credentials, the status of Members-elect, and the functions of House officers at or before the convening of Congress, see Ch. 2, *supra*.

5. U.S. Const. art. I, § 5, clause 1. Many Members-elect have been sworn in absent a certificate of election (see § 15.5, *infra*).

6. For the form of challenges, and the procedure by which they are made, see Ch. 2, *supra*.

7. 2 USC § 26. See also 2 USC § 34 (referring to "credentials in due form of law").

8. See §§ 15.2, 15.7, *infra*.

9. See § 17.5, *infra*.

10. See § 15.1, *infra*.

11. See § 15.3, *infra*. See also 1 Hinds' Precedents § 553 (administration of oath ordered by House, where Governor declined to issue credentials for a Member-elect whose election was unquestioned).

12. See § 15.4, *infra*.

by the state executive.⁽¹³⁾ Indeed, it is doubtful whether state courts have jurisdiction to enjoin the issuance of a certificate, most courts holding they do not since Congress is the sole judge of elections and returns.⁽¹⁴⁾

The certificate is sent, usually by certified mail, directly to the Clerk of the House, who retains it for a period of four years.⁽¹⁵⁾ The certificate is not in contemporary practice carried to the House by the Member-elect. At the convening of Congress, the Clerk states that credentials have been received showing that the persons named therein were elected in accordance with state and federal law.⁽¹⁶⁾

Although the form of the certificate is not specified by law, it normally contains the following elements: signatures of both the Governor and the secretary of state;

13. See §§ 16.3, 16.4, *infra*.

14. See § 15.2, *infra*.

15. The certificates are retained for four years because those of the Resident Commissioner are effective for that period (see § 15.6, *infra*). Subsequently they are delivered to the National Archives.

16. See, i.e., 117 CONG. REC. 9, 92d Cong. 1st Sess., Jan. 21, 1971.

For the Clerk's preliminary review of the certificate, see Ch. 2, *supra*. The Clerk has declined to enroll some Members-elect because their certificates were irregular.

stamp of the great seal of the state; specification of the term to which the Member-elect was chosen; and attestation to the validity of the election.⁽¹⁷⁾

Issuance of Certificate by State Executive

§ 15.1 A citizens' group has no authority to issue certificates of election.⁽¹⁸⁾

17. A further element of some credentials may be the attestation to the death of a Member, where the credentials are for a Member-elect to fill an unexpired term in such a case (see 1 Hinds' Precedents § 568).

When the fact of a Member's death does not appear from his successor's credentials, the House has inquired into the status of the seat (see 2 Hinds' Precedents §§ 1208, 1209).

18. Although by federal statute certificates of Senators-elect must be issued by the Governor under the state seal and countersigned by the secretary of state (2 USCA §§ 1a and 1b), the certificate of a Representative-elect must show only that he was elected in accordance with state or federal law. 2 USCA § 26.

State statutes provide for the Governor, or in some cases, the secretary of state, to issue the certificate for a Representative-elect.

In the 73d Congress⁽¹⁹⁾ and in the 89th Congress⁽²⁰⁾ the House determined that a citizens' group could neither call an election of its own nor issue a certificate of election to a person allegedly chosen as Representative-elect in such an election.

§ 15.2 A state executive official has issued a certificate of election notwithstanding an injunction against such issuance by the state judiciary.⁽¹⁾

On Jan. 3, 1949, the Clerk advised the House that he had placed on the roll the name of Member-elect John C. Davies, from New York, although the

19. 78 CONG. REC. 1521, 73d Cong. 2d Sess., Jan. 29, 1934 (H. Res. 231 and H. Rept. No. 334, Committee on Elections).

20. 111 CONG. REC. 24292, 89th Cong. 1st Sess., Sept. 17, 1965 (dismissal of election contest).

1. Since Congress is the judge of elections and returns, most courts have refused to enjoin or prohibit the issuance of a certificate. See *Keogh v Horner*, 8 F Supp 933 (D. Ill. 1934); *Odegard v Olson*, 264 Minn. 439, 119 N.W. 2d 717 (1963); *Burchell v State Board of Election Commissioners*, 252 Ky. 823, 68 S.W. 2d 427 (1934). *Contra*, *People ex ref. Brown v Board of Suprs. of Suffolk County*, 216 N.Y. 732, 110 N.E. 776 (1915) (see also § 16.4, *infra*).

Clerk had been advised that a state court had issued an order restraining the secretary of state from issuing the certificate.⁽²⁾

§ 15.3 A state Governor, pursuant to the finding of a state court issued a certificate to a contestee based on an official canvass of votes.

On Aug. 12, 1958,⁽³⁾ Mr. Robert Hale, of Maine, was declared entitled to the seat for the First Congressional District in his state, the Governor having issued a certificate of election to him based on a state court finding and on an official canvass of votes.⁽⁴⁾

§ 15.4 In one instance, a Member was sworn without a certificate of election but pursuant to a proclamation by the state Governor that he was duly elected to fill a vacancy.

2. 95 CONG. REC. 8, 81st Cong. 1st Sess. See also § 16.4, *infra*, wherein the House adopted a resolution authorizing the administration of the oath to a Member-elect, a citizens' group having obtained a state court injunction against the issuance of a certificate by the state Governor.

3. 104 CONG. REC. 17119, 85th Cong. 2d Sess.

4. See also H. REPT. NO. 2482, 85th Cong. 2d Sess., Committee on House Administration, to accompany H. Res. 676, relating to the election contest of Oliver v Hale for the First Congressional District of Maine.

On Oct. 18, 1965,⁽⁵⁾ the oath was administered to Mr. Edwin W. Edwards, of Louisiana, to fill a vacancy in a congressional seat from his state. His certificate of election had not been sent to the Clerk, but a proclamation from the state Governor declaring Mr. Edwards to be duly elected to fill a vacancy was transmitted to the Clerk's office. No general election had been held since Mr. Edwards had won the Democratic primary election and was the only qualified candidate to stand for general election to fill the vacancy.

Effect of Delay in Arrival of Certificate

§ 15.5 The oath is administered by unanimous consent to Members-elect whose certificates of elections have not arrived, there being no contest or question as to the validity of their elections.⁽⁶⁾

5. 111 CONG. REC. 27171, 89th Cong. 1st Sess.
6. 115 CONG. REC. 17622, 91st Cong. 1st Sess., June 27, 1969; 115 CONG. REC. 11209, 91st Cong. 1st Sess., May 5, 1969; 115 CONG. REC. 8129, 91st Cong. 1st Sess., Apr. 1, 1969; 114 CONG. REC. 4441, 90th Cong. 2d Sess., Feb. 28, 1968; 113 CONG. REC. 36514, 90th Cong. 1st Sess., Dec. 14, 1967; 105 CONG. REC. 9571, 86th Cong. 1st Sess., June 2, 1959; 105 CONG. REC. 3600, 86th Cong. 1st

Certificates of Delegates and Resident Commissioner

§ 15.6 Certificates of election for Delegates to the House, effective for two years, and for the Resident Commissioner, effective for four years, are transmitted to the House.⁽⁷⁾

At the convening of the 93d Congress, the Clerk addressed the House, after the call of the roll, to state that certificates of election had been received for the Delegates from Guam, the Virgin Islands, and the District of Columbia, and for the Resident Commissioner of Puerto Rico, the latter for a term of four years.⁽⁸⁾

Sess., Mar. 9, 1959; 104 CONG. REC. 10164, 85th Cong. 2d Sess., June 4, 1958; 104 CONG. REC. 1072, 85th Cong. 2d Sess., Jan. 27, 1958; 104 CONG. REC. 669, 85th Cong. 2d Sess., Jan. 20, 1958; 102 CONG. REC. 2383, 84th Cong. 2d Sess., Feb. 8, 1956; 97 CONG. REC. 11481, 82d Cong. 1st Sess., Sept. 17, 1951; 97 CONG. REC. 9316, 82d Cong. 1st Sess., Aug. 1, 1951; 92 CONG. REC. 1852, 79th Cong. 2d Sess., Mar. 4, 1946.

7. In former practice, the Resident Commissioner was appointed rather than elected, and his certificate of appointment was transmitted to the House by the President of the United States. 80 CONG. REC. 2053, 74th Cong. 2d Sess., Feb. 14, 1936. See also 90 CONG. REC. 7102, 78th Cong. 2d Sess., Aug. 18, 1944.
8. 119 CONG. REC. 11-15, 93d Cong. 1st Sess., Jan. 3, 1973.

§ 15.7 Where a territorial act passed by Congress required the Governor to declare the election result and to deliver the certificate to the Delegate but allowed the territorial legislature power over election laws, a territory law requiring the secretary thereof to declare and certify election results was held controlling in an election contest.

On May 21, 1936, a committee on elections submitted House Resolution 521 and Report 2736 in the contested election case of *McCardless v King* for the seat of Delegate from the territory of Hawaii.⁽⁹⁾

The proposed resolution declared Mr. Samuel Wilder King to be duly elected as Delegate. The report also construed the Hawaiian Organic Act, passed by Congress, to determine whether contest had been filed within the 30 days required by law. The act required the territorial Governor to declare elected and to deliver a certificate of election to the Delegate, but also provided that the election be conducted in con-

formity with the general laws of the territory and permitted the territory legislature to amend the election laws.

The committee held that a law of the Hawaiian territorial legislature which required the secretary of the territory to declare and certify election results was controlling as to the question as to whether the contestant had filed notice of contest within the time required by law.⁽¹⁰⁾

Senate Certificates

§ 15.8 At the convening of Congress, the Vice President announces the receipt of certificates of election for Senators-elect, indicates whether they are regular in form, and causes them to be printed in the Record.

On Jan. 21, 1971, the convening date of the Senate in the 92d Congress,⁽¹¹⁾ Vice President Spiro T. Agnew announced as follows:

The Chair lays before the Senate the credentials of 33 Senators elected for 6-year terms beginning January 3, 1971.

All certificates, the Chair is advised, are in the form suggested by the Senate, except the ones from Pennsylvania

9. 80 CONG. REC. 7765, 74th Cong. 2d Sess. The House passed the resolution, without debate, on June 2, 1936, 80 CONG. REC. 8705, 74th Cong. 2d Sess.

10. H. REPT. NO. 2736, Committee on Elections No. 2, 74th Cong. 2d Sess.

11. 117 CONG. REC. 3, 92d Cong. 1st Sess.

and Massachusetts which use the word "Commonwealth" instead of "State," and five others in various State forms.

If there be no objection, the reading of the 28 certificates in the form recommended by the Senate will be waived and they will be printed in full in the Record.

No objection was heard and the certificates were printed in full in the *Congressional Record*.⁽¹²⁾

§ 15.9 On one occasion, the Senate ordered the return to a state of a certificate of appointment to fill a vacancy in that body on receipt of a telegraphic request from the Governor, who advised the Senate that the appointee had declined to serve.

On June 21, 1956,⁽¹³⁾ acting President pro tempore William R. Laird 3d, of West Virginia, laid before the Senate two communications from the Governor of Kentucky, one certifying the appointment of a Senator-elect to fill a vacancy, and one to request the return of the certificate, since the appointee had declined to serve. The Senate ordered the certificate returned to the Governor.

12. 117 CONG. REC. 3-5, 92d Cong. 1st Sess. 2 USC §§ 1a and 1b require a certain form for Senate certificates.

13. 102 CONG. REC. 10769, 84th Cong. 2d Sess.

§ 16. Grounds for Challenge

Before Members-elect rise together to be administered the oath of office at the convening of Congress, any Member-elect may object to the right of a colleague to be sworn in. Similarly, the right to be sworn of a Member-elect who is elected to fill a vacancy during a Congress may be objected to.⁽¹⁴⁾ Most challenges are made to the validity of an election, or to the procedure followed therein, or to the qualifications of the Member-elect. However, a challenge may be directed specifically against the certificate of election itself by reason of formal defects or of impeachment by other facts or documents.⁽¹⁵⁾

Since certificates are prepared in accordance with a customary format⁽¹⁶⁾ and in accordance with state law,⁽¹⁷⁾ defects in form and improper terminology constitute grounds for challenge to a certificate of election. However, if the House is satisfied that a certifi-

14. For the procedure of challenging the right to be sworn, see Ch. 2, *supra*.

15. Some challenges which are in fact objections to the election or qualifications of a Member-elect are stated as objections to his certificate (see §§ 16.6, 16.7, *infra*).

16. See § 16.1, *infra*.

17. See 2 USC § 26.